IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6253 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VALIBEN D/O VALLABHBHAI RATANJIBHAI - Petitioners
Versus
SPECIAL LAND ACQUISITION OFFICER & 1 - Respondents

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Appearance :
MR AJ PATEL for Petitioners
MR LR PUJARI, AGP, for Respondent : 1,
MR AJAY R MEHTA for Respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 14/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

RULE.

The endorsement on the board indicates that notice issued upon the respondent No.1 is not received back, either served or unserved. However, having regard to the facts of the case, Mr.L.R.Pujari, learned Assistant Government Pleader, is directed to waive service of notice on behalf of the respondent No.1 and accordingly, he has waived service of notice on behalf of the respondent No.1. Mr. Ajay R.Mehta, learned counsel, waives service of notice on behalf of the respondent No.2. Having regard to the facts of the case, the petition is taken up for final disposal today.

2. By filing the instant petition under Articles 226 & 227 of the Constitution, the petitioners have prayed to issue a writ of certiorari or any other appropriate writ or order, to quash the decision dated August 18, 2005 of the respondent No.1, by which the application submitted by the petitioners under Section 28A of the Land Acquisition Act, 1894 [“the Act” for short], is rejected on the ground that it was not filed within the period of limitation prescribed under Section 28A of the Act. The petitioners have also prayed to set aside order dated September 30, 2005 passed by the respondent No.1, by which prayer made by the petitioners to reconsider decision dated August 18, 2005 is rejected and the

petitioners are advised to approach the Government.

3. The petitioners were owner of lands bearing revenue Survey Nos. 203/1. 205/3 and 206/3 of village Kawas, Taluka : Choryasi, District : Surat. On examination of proposal to acquire lands for the public purpose of providing Gas Terminal and L.P.G.Plant at the instance of the respondent No.2, the State Government was satisfied that the above mentioned survey numbers of the petitioners, with other lands, were likely to be needed for the said public purpose. Therefore, a notification under Section 4 of the Act was issued, which was published in Official Gazette on November 2, 1982. The land-owners were served with notices as required by Section 4 of the Act and they had lodged their objections against the proposed acquisition. After considering their objections, necessary report as contemplated by Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On consideration of the said report, the State Government was satisfied that the lands which were specified in the notification issued under section 4 of the Act, which was published in the Official Gazette on November 2, 1982, were needed for public purpose of providing Gas Terminal and L.P.G.Plant at the instance of the respondent No.2.

Therefore, a declaration under Section 6 of the Act was made, which was published in Official Gazette on September 15, 1983. The Special Land Acquisition Officer thereafter made his award under Section 11(1) of the Act on May 20, 1985 and offered compensation to the claimants at the rate of Rs.4.50 ps. per sq.mt. The other claimants, who were dissatisfied with the offer of compensation made by the Special Land Acquisition Officer, sought references, which were registered as Land Reference Cases Nos. 175 to 185 of 1987 and 219 to 221 of 1987. The Reference Court by judgment and award dated January 31, 2000 enhanced compensation payable to the claimants to Rs.17/- per sq.mt. Thereupon, the learned advocate for the petitioners applied for certified copy of the judgment and award of the Reference Court on March 27, 2000. Section 28A of the Act allows redetermination of amount of compensation on the basis of award of the Court to the applicant, who is aggrieved by the award of the Collector, notwithstanding the fact that he had not made an application to the Collector under Section 18 of the Act. As the petitioners were dissatisfied with the offer made by the Special Land Acquisition Officer, they instructed their advocate to file an application under Section 28A of the Act. Accordingly, application under Section 28A of the Act was made on March 27, 2000. It may

be mentioned that judgment and award of the Reference Court was challenged by the acquiring-body before the High Court and the High Court reduced the compensation payable to the claimants to Rs.13.50 ps. per sq.mt. However, the learned advocate for the petitioners was informed by the respondent No.1 vide order dated May 18, 2005 that the application filed under Section 28A of the Act was ordered to be filed, as it was time-barred, because certified copy of the award of the Reference Court was filed on November 19, 2001. On receipt of the said order, the petitioners, through their lawyer, applied to the respondent No.1 to reconsider the said decision. However, the request to reconsider the decision is also rejected and the petitioners have been advised to approach the Government by a communication dated September 30, 2005. The case of the petitioners is that it is not necessary to annex certified copy of judgment and award of the Reference Court with the application to be submitted under Section 28A of the Act, in view of the decision of Division Bench of this Court in Chhitubhai Naranbhai Patel vs. Special Land Acquisition Officer, 2005(1) GLH 88. The petitioners have asserted that the decision of the respondent No.1 to reject the application of the petitioners made under Section 28A of the Act, is arbitrary, discriminatory and violative of the

fundamental rights guaranteed under Articles 14 & 21 of the Constitution, as a result of which, the same should be set aside. Under the circumstances, the petitioners have filed the instant petition and claimed reliefs to which reference is made earlier.

4. This Court has heard Mr.A.J.Patel, learned counsel for the petitioners as well as Mr.L.R.Pujari, learned Assistant Government Pleader for the respondent No.1, and Mr.Ajay R.Mehta, learned counsel for the respondent No.2. This Court has also considered the documents forming part of the petition.

5. From the record of the case, it is evident that the lands of the petitioners and other lands were acquired pursuant to publication of notification issued under Section 4 of the Act in the Official Gazette on November 2, 1982 for public purpose of providing a Gas Terminal and a L.P.G.Plant at the instance of the respondent No.2. It is not in dispute that the respondent No.1 had made his award under Section 11 of the Act on May 20, 1985 and offered compensation to the claimants at the rate of Rs. 4.50 Ps. per sq.mt. Feeling aggrieved by the said order, certain claimants had sought references, which were registered as noted earlier. The record shows that by

common judgment and award dated January 31, 2000, the Reference Court enhanced compensation payable to the claimants at the rate of Rs.17/- per sq.mt. Under the circumstances, in terms of Section 28A of the Act the petitioners filed an application on March 27, 2000. However, the said application has been rejected by the respondent No.1 vide order dated May 18, 2005 holding that it was time-barred because the certified copy of the award of the Reference Court was filed before him on November 19, 2001. In Chhitubhai Naranbhai Patel (supra), the Division Bench of this Court has taken the view that application for determination of compensation filed under Section 28A of the Act need not be accompanied with certified copy of award of the Reference Court, and the Collector cannot reject the said application on the ground of non-production of certified copy. What is ruled therein is that award of the Reference Court would be a relevant material, which will be required to be produced by the claimant, who has filed application under Section 28A of the Act, when such application is taken up for decision on merits, but, filing of certified copy of the judgment and award of the Reference Court with application under Section 28A of the Act is not *sine qua non*. In view of the above-mentioned decision of the Division Bench, this Court is of the opinion that the

respondent No.1 was not justified in rejecting the application dated March 27, 2000 submitted by the petitioners under Section 28A of the Act on the ground that the same was barred by limitation. The judgment and award of the Reference Court was pronounced on January 31, 2000, whereas the application under Section 28A of the Act was filed on March 27, 2000, which was within the period prescribed by Section 28A of the Act. As the order dated August 18, 2005 is contrary to the decision of this Court, the same will have to be set aside and the prayers made in the petition will have to be granted.

For the foregoing reasons, the petition succeeds. The order dated August 18, 2005 rendered by the respondent No.1 rejecting the application submitted by the petitioners under Section 28A of the Act on March 27, 2000, is hereby set aside. So also, the order dated September 30, 2005 passed by the respondent No.1 rejecting the prayer made by the petitioners to reconsider the decision dated August 18, 2005, is also hereby set aside. The respondent No.1 is hereby directed to decide the said application on merits and in accordance with law as early as possible and preferably before October 31, 2006. The record shows that judgment and award of the Reference Court was subjected to

challenge before the High Court and the High Court has reduced the amount of compensation payable to the claimants to Rs.3.30 Ps. per sq.mt. Therefore, it is directed that the respondent No.1 shall take into consideration the judgment of the High Court also while deciding the application submitted by the petitioners under Section 28A of the Act and redetermine the amount of compensation payable to the claimants in accordance with law. Subject to above-referred to directions, rule is made absolute. There shall be no order as to costs.

[J.M.PANCHAL,J.]

[SMT.ABHILASHA KUMARI,J.]

(patel)